



*LeRoux*

The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Raymond Corporation  
File: B-229767.2  
Date: April 26, 1988

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### DIGEST

1. An agency satisfies requirement to conduct meaningful discussions where it advises offeror of proposal deficiencies and affords offeror an opportunity to address these defects through the submission of best and final offer.
2. Post-award protest challenging propriety of or need for particular technical requirements is untimely under Bid Protest Regulations, which require that protests of alleged improprieties apparent on the face of a solicitation be protested before the closing date for receipt of initial proposals.
3. Agency's downgrading of proposal under evaluation criteria measuring conformance with specifications is not unreasonable where the magnitude of the point reduction was consistent with the defects found in the offeror's proposal.

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### DECISION

Raymond Corporation protests the award of a contract to Hyster Corporation under Internal Revenue Service (IRS), Department of the Treasury, request for proposals (RFP) No. IRS-87-051. Raymond asserts that the IRS failed to conduct meaningful discussions and improperly evaluated its proposal.

We deny the protest.

The RFP solicited offers for various items of inventory distribution equipment--three electric fork-lift trucks, two swing reach fork trucks, three stock selectors, and a wire guidance system--to be delivered and installed at an IRS distribution facility in California. The RFP included detailed design specifications for each item, of which the

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following are pertinent to this protest: (1) each fork-lift truck was to be equipped with forks not less than 4 inches nor more than 5 inches in width, and also with tires made of industrial polyurethane; (2) each swing reach fork truck and stock selector was to be equipped with an overhead guard, the underside of which was to be not less than 42 inches above the vehicle's seat; and (3) all vehicles were to be equipped with an auxiliary electrical service system, including a direct battery hook-up for future installation of an on-board data communication terminal, to be furnished and mounted on the front wall of the vehicle's operator compartment.

The solicitation contemplated the award of a single fixed-price contract to the offeror deemed most advantageous to the government, price and other factors considered, and provided that proposals would be evaluated under the following two technical factors: conformance to specifications (60 of 100 possible points), and delivery and installation (40 points). The solicitation also specified that technical merit and price were of approximately equal importance and cautioned offerors that the lowest-price proposal would not necessarily be selected for award.

Four firms responded to the RFP. The technical evaluation panel rated the offerors on the basis of technical merit and price, and recommended that three firms, including Raymond, be included in the competitive range. These three remaining competitors then were notified (by telephone and letter) of deficiencies in their respective proposals, and were requested to submit best and final offers (BAFOs). Raymond and Hyster were the two highest-rated offerors, with final technical scores and evaluated prices of 90 technical points/\$358,333.08 evaluated total price, and 95 points/\$363,418.00, respectively. Based on these technical scores and prices, the contracting officer determined that Hyster's 5-point technical advantage more than offset Raymond's 1.4 percent price advantage, and therefore selected Hyster for award.

Raymond's initial proposal was found deficient for failure to comply with the specifications listed above. Specifically, Raymond's proposed fork-lift trucks had a fork width of 3.9 inches as compared to the solicitation's requirement of 4 to 5 inches, and also had tires made of rubber rather than polyurethane as required; Raymond's proposed swing reach fork trucks and stock selectors had overhead guard clearances of only 39.4 inches instead of the required 42 inches; and none of Raymond's proposed vehicles came equipped with an auxiliary electric service system allowing for the future hook-up of an on-board data communications terminal. The contracting officer notified Raymond of these

deficiencies during a telephone conversation and again in a letter requesting the submission of BAFO, but Raymond did not correct them in its BAFO.

Raymond first contends that the notification of deficiencies it received did not constitute meaningful discussions, as required by regulation, since the contracting officer would not discuss the merits of the technical requirements with which he was requiring Raymond to comply. This contention is without merit.

We repeatedly have held that discussions are adequate where an agency informs the offeror of deficiencies and affords the offeror an opportunity to submit a revised proposal addressing the agency's concerns. Automated Sciences Group, Inc., B-228913, Dec. 15, 1987, 87-2 CPD ¶ 597. This is precisely what occurred here. The IRS expressly notified Raymond, both orally and in writing, of the deficiencies found in its initial proposal, and afforded the firm an opportunity to correct the deficiencies in a BAFO. Contrary to Raymond's position, discussion of the propriety of or need for specific technical requirements is not a prerequisite to discussions being meaningful.

Raymond also challenges the agency's downgrading of its proposal for noncompliance with the above-listed technical specifications. For example, Raymond maintains that the 3.9-inch width fork it proposed was essentially equivalent to a 4-inch width fork, and that the rubber tires proposed for its fork-lift truck, as well as the overhead clearance provided for the other two vehicles, although technically noncompliant with the RFP requirements, were sufficient to satisfy the agency's needs. In fact, Raymond states that rubber tires are preferable on fork-lift trucks because polyurethane tires do not possess the traction necessary to maneuver on loading docks. Finally, with respect to its alleged failure to provide in its proposal for the future installation of computer terminals, Raymond states that it was unable to specify the exact modifications needed, since the agency did not specify the precise dimensions of the terminal to be installed.

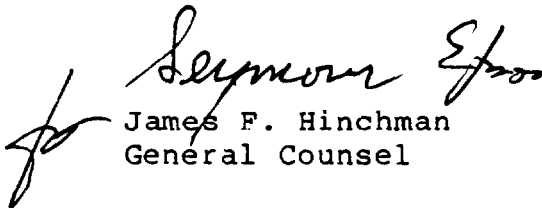
Notwithstanding Raymond's characterization of this basis of protest as a challenge to the agency's technical evaluation of its proposal, it actually is a challenge to the propriety of the specifications themselves. In this regard, we note that Raymond does not challenge the evaluation as inconsistent with the RFP but, rather, claims that the technical requirements to which its proposal did not conform exceeded or did not satisfy the government's needs, or did not contain sufficient guidance to allow for the submission of a proper offer. Under our Bid Protest Regulations, protests

such as this, based on alleged improprieties apparent on the face of a solicitation, must be filed before the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1988). Because Raymond did not file this protest until after award, its challenge to the propriety of particular solicitation requirements is untimely.

In any case, the agency's evaluation of Raymond's proposal appears to have been reasonable and consistent with the RFP. Raymond suggests that the noted defects in its proposal were minor technical deficiencies that did not warrant the rejection of its offer. As explained above, however, Raymond's proposal in fact was not rejected but, rather, was downgraded 10 points for failure to comply with four technical requirements. This reduction in points appears to us to be consistent with the evaluation scheme, which specifically provided for rating offerors' conformance to the design specifications. We note that Hyster's proposal also was downgraded for being noncompliant with a design specification requiring that the stock selectors be equipped with a specific battery.

Neither does it appear that the requirements were unrelated to the IRS's needs. For example, the requirements that the forks be a particular width and that the tires be polyurethane were designed to maximize safety; forks of the designated width would better ensure safe handling of materials than narrower forks, and polyurethane tires, unlike rubber tires, would not leave residue on the floors, possibly creating slippery conditions.

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel